

### **REMARKS**

The application has been revised in light of the Office Action mailed May 24, 2004. Claims 46-48 and 50-56 are currently pending in the application. By this amendment, Claims 46, 50 and 54 have been amended, Claim 49 has been canceled, and Claim 56 has been added. No new matter has been introduced. In view of the amendments above and the remarks to follow, reconsideration and allowance of this application are respectfully requested. Accordingly, early and favorable consideration of this application is respectfully requested.

### **Information Disclosure Statement**

The Information Disclosure Statement ("IDS") filed March 25, 2002 was objected to for failing to comply with 37 CFR 1.98(a)(3) because it did not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c), most knowledgeable about the content of the information, of each patent listed that is not in the English language. It is respectfully submitted that each of the documents cited in the March 25, 2002 Information Disclosure Statement was previously cited in one or all of the following U.S. patent applications: Application Serial Nos. 09/417,535; 09/096,380; 08/777,115; 08/360,015; 07/925,496; and 07/834,687. All of these applications have been relied upon for an earlier effective date under 35 U.S.C. § 120. Since the requirements of 37 CFR 1.98(a)(3) were satisfied in at least one of the above identified applications, a concise explanation of the relevance of each of the patents listed is not required in this IDS. Accordingly, a new IDS listing each of the references not considered by the Examiner is attached hereto. Consideration by the Examiner is respectfully requested.

### **Double Patenting**

Claims 46-55 were rejected under the judicially created doctrine of obviousness-type double patenting in view of Claims 1-43 of U.S. Patent No. 5,383,888. A terminal disclaimer is attached hereto.

### **35 USC § 112, first paragraph**

Claim 54 was rejected under 35 U.S.C. § 112, first paragraph, because the specification does not reasonably provide enablement for two cooperating “paddles.” Claim 54 has been amended to include an endoscopic surgical apparatus wherein the cooperating jaws are configured as multiple blade members. The subject matter of amended Claim 54 is believed to be supported by the disclosure of the application as filed. FIGS. 27-30 illustrate an endoscopic surgical apparatus 600 comprising a retractor assembly 612 being operatively associated with the articulating section 608 and including “a plurality of cooperative interleaved retractor blade members 614, 616, and 618.” Page 25, lines 1-2. Therefore, reconsideration and withdrawal of the rejection is respectfully requested and allowance of the claim is earnestly solicited.

### **35 USC § 102b**

Claims 46-48, 51-53 were rejected under 35 U.S.C. § 102(b) over U.S. Patent No. 4,880,015 (Nierman). With regard to independent Claim 46 and Claims 47-48 and 51-53, which depend therefrom, Nierman does not teach or suggest an endoscopic surgical apparatus comprising an endoscopic portion extending distally from and being rotatable in relation to the handle portion, as recited in amended Claim 46.

In contrast, the flexible shaft 45 disclosed in Nierman is not rotatably mounted to the handle 44. Instead, flexible shaft 45 is fixed to handle 44 and only the articulation portion

54, cooperating jaws 46 and element 55 is permitted to pivot about the longitudinal axis of flexible cable 45. See Column 8, lines 67-68 – Column 9, lines 1-3.

Accordingly, Claim 46 and Claims 47-48 and 51-53, which depend therefrom, are believed to be patentably distinct over Nierman. Therefore, reconsideration and withdrawal of the rejection is respectfully requested and allowance of the Claims is earnestly solicited.

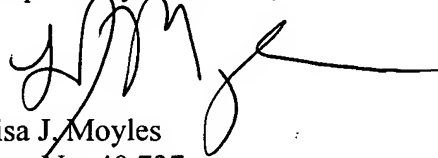
#### **New Claims**

New dependent Claim 56 has been added. Claim 56 depends from independent Claim 46. For at least the reasons discussed above with respect to Claim 46, Claim 56 is also believed to be in condition for allowance.

#### **Conclusion**

It is respectfully submitted that all of the Claims now pending in this application, namely Claims 46-48 and 50-56, are now in condition for allowance. Accordingly, early and favorable consideration of this application is respectfully requested. Should the Examiner believe that a telephone or personal interview may facilitate resolution of any remaining matters, she is respectfully requested to contact Applicant's attorney at the number indicated below.

Respectfully submitted,



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